SUPREME COURT OF THE UNITED STATES.

No. 331.

HENRY KELLOGG, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

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1 *Petition.*

To the honorable judges of the U. S. Court of Claims.

The petition of Henry Kellogg, of New Haven, Connecticut, respectfully shows to this court:

That by an act approved March 3, 1853, chap. 57, (10 Stat., 206,) Congress authorized the commencement of an aqueduct to supply the city of Washington with water, upon such plans as the President should approve; that a plan was approved, and Captain Montgomery C. Meigs, of the corps of engineers, was appointed to superintend the execution of the work; that on the 23d of January, 1854, the said Captain Meigs, on behalf of the United States, and with the approval of the Secretary of War, entered into a special contract with William H. Degges and Francis H. Smith, by which said Degges and Smith agreed to furnish for said work, to be delivered when and where ordered by said Captain Meigs, not less than twenty-five million nor more than forty million bricks, for which the United States agreed to make payment at the rate of eight dollars and seventy-five cents per thousand. To secure the performance of this contract, Degges & Smith gave bond in the penal sum of $30,000, with Alexander H. Mechlin and Columbus Alexander as sureties. Copies of the contract and bond are hereunto annexed, marked exhibits A and B.

And your petitioner shows that no appropriation for the work was made by Congress at the session of 1853–'4, and consequently no bricks were called for during the working season of 1854, being the season following the date of the contract; but at the next session, by an act approved March 3, 1855, chap. 175, (10 Stat., 664,) Congress made an appropriation for the work, and Captain Meigs gave notice to Degges & Smith, and also to Mechlin and Alexander, to deliver four million bricks during the ensuing season—the summer of 1855. A copy of the notice is hereto annexed, marked exhibit C. To this notice Degges & Smith made no response, nor did they make any reply to subsequent notices addressed to them, but utterly abandoned their undertaking.

2 And your petitioner shows that Captain Meigs, failing to obtain any reply from Degges & Smith, then notified Mechlin and Alexander that they would be held responsible for the performance of the contract; whereupon Mechlin and Alexander, to save themselves from loss and the government from delay in the important work in question, made an arrangement with Captain Meigs by which they undertook to furnish the bricks required of Degges & Smith under their contract, and were to receive payment therefor at the rates and in the manner stipulated in said contract. Copies of the papers respecting this arrangement are hereto annexed, marked exhibits D 1, D 2, D 3, D 4, D 5.

And your petitioner shows, that upon the making of this arrangement Mechlin and Alexander purchased a tract of land adjacent to the line of the intended work, and containing clay proper for making bricks, and proceeded to make extensive preparations for manufacturing the vast number of bricks required, but without completing

their preparations they, on or about the 9th of May, 1855, entered into an agreement with one William H. De Groot, who undertook to furnish and deliver all the bricks required of Mechlin and Alexander, and to pay them 5 per cent. of the amount received therefor. And Mechlin and Alexander sold and conveyed to said De Groot the tract of land purchased as aforesaid for a brick-yard and all the machinery and appliances prepared for making bricks, and thereupon the said De Groot conveyed the said land and all the machinery and appliances to one Harrison Bowen upon trust, to permit the said De Groot to use and occupy the same so long as he should faithfully perform the agreement by him made with Mechlin and Alexander, and upon his default then to enter upon said land and deliver the same, with all the machinery and appliances, to Mechlin and Alexander, to be by them held and used until they should have fully performed the contract for making bricks for the aqueduct, and then to sell the said land and machinery and appliances, and apply the proceeds as directed by the deed. A copy of said deed is hereto annexed, marked Exhibit E.

And your petitioner shows, that in the summer of 1855 some bricks were furnished by said De Groot on account of the contract; but in the following winter of 1855–'6 Mechlin and Alexander discovered that said De Groot had failed to furnish the full number required, and that Captain Meigs had made up the deficiency by purchasing from other parties, and had charged the cost to them; whereupon, Mechlin and Alexander wrote to De Groot, who was absent from Washington, but failed to obtain any answer from him or any satisfaction from his agents or associates. Mechlin and Alexander

3. being thus under the necessity of making other arrangements to fulfil their obligations for the supply of bricks during the next season, revoked the power of attorney which they had given to De Groot, and entered into a contract with your petitioner, on the 3d day of March, 1856, by which your petitioner undertook to furnish all the bricks required and to be required of Mechlin and Alexander for the use of the aqueduct, and to receive payment therefor from the United States at contract price, and to pay over to Mechlin and Alexander five per cent. of the amount so received; and Mechlin and Alexander, by deed, constituted your petitioner their lawful attorney to furnish the bricks and to receive payment therefor. Copies of the contract and of the power of attorney are hereto annexed, marked exhibits F 1, F 2. And Harrison Bowen, trustee as above stated, entered upon the land prepared for brick-yards, and delivered possession thereof to Mechlin and Alexander, together with the machinery and appliances, who then placed the same in possession of your petitioner to hold, occupy, and use in the business of furnishing bricks under the contracts hereinbefore mentioned.

And your petitioner further shows, that being thus in possession of the brick-yards, machinery, and appliances, he proceeded to furnish the remainder of the four million bricks required of Mechlin and Alexander, as hereinbefore mentioned, and also to make preparations for manufacturing the remainder of the twenty-five millions of bricks

required by the contract of Degges & Smith, hereinbefore mentioned; and for this purpose he enlarged and improved the brick-yards already commenced, and prepared other yards, repaired and improved the machinery, and purchased and prepared materials for an extensive manufacture of bricks, and in so doing expended money to the amount of $54,186 12. But Congress, which was in session during the summer of 1856, made no appropriation for the aqueduct, and the small remnant of former appropriations enabled Captain Meigs to receive from your petitioner only 1,960,704 bricks during that season. On the day of adjournment, the 18th of August, an appropriation of $250,000 was made for paying off liabilities and preserving the work done, indicating an intention to suspend it, and soon after your petitioner was notified by Captain Meigs not to make or deliver any more bricks. The location of the yard was not suitable for making bricks for sale, and your petitioner, after sending some small lots to Washington, was obliged to suspend operations and discharge his workmen.

Your petitioner further shows, that at the next session of Congress an appropriation was made by the act of March 3, 1857, (11 Stat., 225,) of $1,000,000 for continuing the work; and on the same day a joint resolution was passed (11 Stat., 256) which in substance contained a proposition addressed to the parties interested in the brick contract to the effect that if they would consent to cancel the
4 contract, and would turn over to the United States the bricks made and the machinery and other appliances for making bricks, the United States would indemnify them for all damages, losses, and liabilities incurred on account of said contract.

The resolution is in the following words:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury shall settle and adjust with all the parties respectively interested therein, on principles of justice and equity, all damages, losses, and liabilities incurred or sustained by said parties respectively, on account of their contract for manufacturing brick for the Washington aqueduct; and he is hereby directed to pay the amount found due by such settlement and adjustment out of the appropriation made for paying the liabilities for the said aqueduct by the act "making appropriations for certain civil expenses of government for the year ending June thirtieth, eighteen hundred and fifty-seven," approved the eighteenth of August, eighteen hundred and fifty-six: *Provided*, That the said parties first surrender to the United States all the brick made, together with all the machinery and appliances and other personal property prepared for executing the said contract, and that the said contract be cancelled.

Approved March 3, 1857.

And your petitioner shows that after the passage of this joint resolution, Captain M. C. Meigs, superintendent of the work as aforesaid, called upon your petitioner and upon Mechlin and Alexander to elect whether they would proceed to fulfil the contract, or accept the proposition contained in the joint resolution. Your petitioner was

not ignorant, that with the preparations he had made, considerable profits might thereafter be realized in furnishing bricks under the contract, and he had commenced to assemble workmen and resume the manufacture, but the inability of the United States during the previous season to receive the bricks he had made, followed by the total suspension of the work under an act of Congress which seemed to contemplate no early resumption of it, together with the consequent dispersion of his workmen and the disarrangement of all his plans, had reduced your petitioner to a condition in which the immediate reimbursement of his outlay and relief from his liabilities had become of pressing importance, and for these objects he was willing to accede to the proposition contained in the joint resolution. Mechlin and Alexander agreed to do the same, as did also William H. De Groot.

Although your petitioner alone had in his possession the "brick made, together with all the machinery and appliances and other personal property prepared for executing the said contract," and he alone was the equitable owner of the contract, and thus he alone was to perform the condition and furnish the consideration upon which the indemnification of all the parties was to depend, yet to meet the views of the counsel for the United States, your petitioner united in a deed with Mechlin, Alexander, and De Groot, dated the 8th of April, 1857, by which they surrendered to the United States all the property described in the proviso to the joint resolution and surrendered the contract to be cancelled; and they also leased to the United States the land on which were the brick-yards, machinery, and other property surrendered, to hold and use so long as it might be necessary to make bricks for the aqueduct. And your petitioner delivered to Captain Meigs for the United States possession of all the lands and personal property conveyed to the United States by the deeds above-mentioned. A copy of the deed of surrender is hereto annexed, marked Exhibit H.

And your petitioner further shows that having thus put the United States in possession of the results of the labor of several years and the expenditure of, it is believed, over one hundred thousand dollars in money, your petitioner then, in conjunction with Mechlin and Alexander, and William H. De Groot, presented to the Secretary of the Treasury their several accounts of damages, losses, and liabilities incurred and sustained by them respectively on account of their contract for manufacturing bricks. A copy of their joint letter is hereto annexed, marked Exhibit I.

And your petitioner further shows that by the amicable arrangement spoken of in article XVI of the said Exhibit I, it was contemplated to have the moneys which should be found due to the parties respectively, paid to the Hon. Charles Naylor, under a power of attorney for each of said parties, to await the result of an arbitration or compromise of their conflicting of the claims against each other, existing before the settlement and going out of the complicated transactions hereinbefore set forth, and thus not herein stated—each of the parties claiming to have good cause of action against the other. But this arrangement never was fully consummated and was repudiated by the parties, of

all which the Secretary of the Treasury had notice, and he did not take cognizance of or act under that arrangement in any way whatever.

And your petitioner further shows that the Secretary of the Treasury, mistaking or utterly disregarding the plain intent and meaning of the joint resolution, decided that he would make the measure of his allowance, not the "damages, losses, and liabilities incurred or sustained by said parties, respectively," but the actual value of the property turned over to the United States by your petitioner; and he further decided that he would pay the amount by him so allowed, not to your petitioner, by whom the property was surrendered to the United States, but to Mechlin and Alexander. And he accordingly, on the 11th of January, 1858, awarded and paid to Mechlin and Alexander the sum of $29,534 19; utterly denying the right of your petitioner to any relief whatever under the joint resolution, or to even the value of his own property by him surrendered and conveyed to the United States.

A copy of the award of the Secretary of the Treasury is hereto annexed, marked Exhibit K.

And your petitioner further shows that after the said award was made, and before any payment was made, he protested in writi[ng] against the payment to Mechlin and Alexander of any money due [to] him, your said petitioner; a copy of which protest is hereto annexe[d] marked Exhibit L.

And your petitioner further shows that out of the sum of $29,534 1[9] so received by Mechlin and Alexander from the Treasury, they pa[id] over to your petitioner a sum less than $7,000, which your petition[er] is willing to credit to the United States on account of his claim now presented under the joint resolution aforesaid.

And your petitioner further shows that the said sum was paid by Mechlin and Alexander, not in pursuance of the award of the Secretary of the Treasury, nor in discharge of any debt due to your petitioner from the United States; but in consideration of expenses incurred and moneys paid by your petitioner for the benefit of said Mechlin and Alexander, in and about the execution of said brick contract, and on other amounts which entitled your petitioner to receive the same from Mechlin and Alexander without respect to and independent of the said award. But inasmuch as the receipt of those moneys diminishes the amount of the losses and damages sustained by your petitioner, he thinks it right to deduct the same from the amount of his claims under the act of March 3, 1857.

6 And your petitioner claims that by the joint resolution of Congress hereinbefore recited, and in consideration of the transfer and surrender of property by him, made to the United States in accordance with the terms of said resolution, and of the cancellation of the contract, the United States became bound to indemnify your petitioner, being one of the parties interested in the said contract, for all damages, losses, and liabilites by him incurred or sustained on account of said contract; and he has already shown that the Secretary of the Treasury, upon whom Congress devolved the

duty of settling his account, utterly refused to do so; wherefore, he seeks relief in this court, and he states the following claim against the United States.

For moneys expended in the execution of the contract to make brick for the aqueduct over and above all sums received from the United States, and from Mechlin and Alexander, as hereinbefore stated, viz:

Gross amount of expenditures		$64,308 58
Paid Mechlin and Alexander five per cent. on the whole number of bricks they estimated as remaining to be delivered under the contract, which amounts to		9,588 23
The ten per cent. of the price of bricks already delivered, which was withheld by government under the terms of the contract as additional and collateral security for its faithful performance		2,118 40
My own time, ($2,000 per annum; was receiving $1,500 at home previous to this,) from March 3d, 1856, to July 11th, 1858—to 1 year, 10 months, 9 days		3,722 15
Partner's time 1 year, 9 months, 9 days, at the same rate per annum		3,555 49
		83,291 85
Received from government	$10,122 46	
Do. Mechlin and Alexander	10,476 96	
		20,599 44
Balance		62,692 43
Interest on balance from April 12th, 1857, (date of surrender of property,) to December 1st, 1864, 7 years, 7 months, 18 days, being a loss so far as paid and a liability when not paid		28,697 44
		91,389 87

7 And your petitioner further shows that George A. Bates, of Worcester, Mass., is interested in this claim under an agreement made between him and your petitioner on the 1st day of April, 1856, and is entitled to an equal share of the amount that shall be recovered in this suit less the amount of liabilities and debts outstanding and unpaid, incurred on account of the said contract, and for which your petitioner is holden, and of the expenses of this suit.

And your petitioner further shows that he and the said George A. Bates have at all times borne true allegiance to the government of the United States, and have not in any way aided, abetted, or given encouragement to rebellion against said government.

HENRY KELLOGG.

CARLISLE & MCPHERSON, *Solicitors for Claimant,*
No. 436 D street, Washington City.

STATE OF CONNECTICUT, *City of New Haven, ss:*

NOVEMBER 28, A. D. 1864.

Before me, George H. Watrous, a notary public in said city, on this 28th day of November, 1864, personally appeared Henry Kellogg, and made oath that no assignment or transfer of the claim in the above petition stated, or any part thereof, or interest therein, has been made except as in the petition stated, and that he is justly entitled to the amount therein claimed from the United States after allowing all just credits and offsets, and that he believes the facts as stated in the said petition are true.

[L. S.] GEORGE H. WATROUS, *Notary Public.*

Exhibit A.

Agreement between William H. Degges, of Washington, D. C., and Francis H. Smith, of Baltimore, of the first part, and Captain Montgomery C. Meigs, of the United States corps of engineers, of the second part, acting for and in behalf of the United States of America, in the construction of the Washington aqueduct, witnesseth:

That the party of the first part, in consideration of the matters hereinafter referred to and set out, covenants and agrees, to and with the party of the second part, to furnish and deliver, at the proper cost of the said party of the first part, a quantity of bricks to be used in the construction of the Washington aqueduct.

The whole quantity to be furnished under this contract and agreement is not to exceed forty millions, and not to be less than twenty-five millions. They are to be delivered from time to time, as directed by the party of the second part, at such places, such times, and in such quantities as the said party of the second part may direct, and to conform in every particular to the municipal laws of the city of Washington, and to the conditions specified in the printed advertisement hereto annexed, and which is to be considered as part of this contract.

The party of the first part agrees to commence the construction of the necessary yards, sheds, and machines, for the manufacture of the said bricks, within twenty days after this contract receives the approval of the Secretary of War, and to grade and prepare, before the first of April in this present year, yards sufficient for the manufacture of at least sixty thousand bricks per day, provided that all the bricks to be delivered under this contract shall be subjected to a rigid inspection by the party of the second part, or his agents appointed therefor, and that this inspection shall be final; and the party of the first part covenants and agrees to remove immediately, at their own cost and expense, all bricks, deposited on the line of the work, which may be rejected or condemned as of unsuitable quality by the party of the second part.

And the party of the second part covenants and agrees to pay to

the party of the first part the sum of eight dollars and seventy-five cents for every thousand brick deposited on the line of the aqueduct in conformity to his directions, which may be inspected and accepted by him as of suitable quality; provided, that if at any time the party of the first part shall have deposited on the line of the canal, ready for transportation to the line of the aqueduct, bricks which the party of the second part is not ready to use, a reasonable sum per thousand shall be paid for them, reserving enough of the stipulated price to cover fully the cost of transportation from the canal bank to the aqueduct, and upon such payment said bricks shall become the property of the United States, not to be removed by the party of the first part for any other purpose than their transportation to the aqueduct line.

Provided, however, that in case the party of the second part shall at any time be of opinion that this contract is not duly complied with by the party of the first part, or that it is not in due progress of execution, or that the said party of the first part is irregular or negligent, in such case he shall be authorized to declare this contract forfeited, and thereupon the same shall then become null, and the party of the first part shall have no appeal from the opinion and decision aforesaid, and they hereby release all right to except
9 to or question the same in any place or under any circumstances whatever, but the party of the first part shall still remain liable to the party of the second part for the damages occasioned to him by the said non-compliance, irregularity, or negligence.

And provided also, that in order to secure the faithful and punctual performance of the covenants above made by the party of the first part, and to indemnify and protect the party of the second part from loss in case of default and forfeiture of this contract, the said party of the second part shall be authorized to retain in his hands, until the completion of the contract, ten per cent. on the amount of moneys at any time due to the said party of the first part, until the moneys thus retained shall amount to fifteen thousand dollars; after which, the bricks subsequently delivered shall be paid for in full on delivery, leaving the aforesaid fifteen thousand dollars in the possession of the party of the second part until the completion of the contract.

And it is further stipulated and agreed that no member of Congress shall be admitted to any share or part of this contract or agreement, or to any benefit to arise therefrom, and this contract shall be in all its parts subject to the terms and requisitions of an act of Congress, passed on the twenty-first day of April, in the year of our Lord one thousand eight hundred and eight, entitled "An act concerning public contracts."

And this contract is also expressly understood to be subject to the terms and conditions of the joint resolution of Congress, approved April fourteenth, one thousand eight hundred and fifty-two, containing a proviso in the following terms, to wit: "Provided, nothing herein contained shall be so construed as to authorize any officer of the United States to bind the United States by contract beyond the

amount appropriated by Congress, or to sanction any such contract heretofore made."

Provided, also, that it is expressly understood and agreed that this contract, nor any part thereof, shall not be sub-let nor assigned; but that it shall be well and truly carried out and fulfilled in good faith by the above-recited party of the first part, and that all payments on account thereof shall be made to the aforesaid party of the first part, their heirs, executors, or administrators, or to such person or persons as they may lawfully authorize by power of attorney to receive the same.

And provided further, that this contract shall not be binding upon the United States until it shall have received the approval of the Secretary of War.

And for the true and faithful performance of all and singular the covenants, articles, and agreements hereinbefore particularly set forth, the subscribers hereunto bind themselves, jointly and severally, their and each of their successors, heirs, executors, and administrators.

Thus covenanted, made, and agreed by the parties, this twenty-third day of January, in the year one thousand eight hundred and fifty-four, (1854,) as witness their hands and seals.

[SEAL.] W. H. DEGGES.
[SEAL.] F. H. SMITH.
[SEAL.] M. C. MEIGS,
Capt. of Eng.

Signed, sealed, and delivered in presence of—
JAMES BRYAN.
W. G. FITZPATRICK.
Z. W. DENHAM.

Exhibit B.

Know all men by these presents, that we, Columbus Alexander and Alexander H. Mechlin, both of the city of Washington, District of Columbia, are held and firmly bound unto the United States of America in the full and just sum of thirty thousand dollars, lawful money of the United States, to be paid to the said United States or to its proper agent or attorney duly authorized to receive the same, to which payment, well and truly to be made and done, we bind ourselves and every of us, our and every of our heirs, executors, and administrators, in the whole and for the whole, jointly and severally, firmly by these presents. Sealed with our seals, and dated this twenty-seventh day of January, anno Domini one thousand eight hundred and fifty-four.

The condition of the above obligation is such, that if W. H. Degges, of the city of Washington, and Francis H. Smith, of the city of Baltimore, their heirs, executors, or administrators, do and shall well and truly execute a contract which they, the said W. H. Degges and Francis F. Smith have entered into with Capt. M. C. Meigs, of the United States corps of engineers, for and in behalf of the United States, by which they have contracted to furnish and deliver at their

own proper cost a certain quantity of bricks, not to exceed forty millions, to be made of tempered clay, conforming in all respects to the municipal laws of the city of Washington, and to be of such quality as is specified in such contract, for the sum of eight dol-
11 lars and seventy-five cents per thousand, the said contract being hereto annexed, then the foregoing obligation to be void and of none effect; otherwise to remain in full force and virtue in law.

[SEAL.] C. ALEXANDER.
[SEAL.] A. H. MECHLIN.

Signed, sealed, and delivered in presence of—
J. D. HOOVER.
WM. PHILLIPS.

I certify that I am acquainted with Columbus Alexander and Alexander H. Mechlin, the sureties named in and who executed the within writing obligatory, and that they are severally freeholders and residents of the city of Washington, and in my opinion sufficient sureties for the purposes mentioned in the within bond.

J. D. HOOVER,
U. S. Marshal, D. C.

Approved: JEFF'N DAVIS,
Secretary of War.

February 4, 1854.

Exhibit C.

U. S. CAP. EXT., P. O. EXT., AND
WASHINGTON AQUEDUCT OFFICE,
Washington, March 12, 1855.

Messrs. W. H. Degges & Co., No. 484 L street, Washington:

DEAR SIRS: An appropriation of $250,000 having been made by Congress for continuing the work upon the Washington aqueduct, I have to inform you that there will be required for the season's work about four millions of bricks, to be delivered at such points upon the line as may from time to time be designated.

Be good enough to let me know what arrangements you may have made for this supply.

I am, very respectfully, your ob't serv't,

M. C. MEIGS,
Capt. Eng. in Charge.

Also, to C. Alexander, F. H. Smith, and A. H. Mechlin.

12 *Exhibit D* 1.

U. S. CAP. EXT., P. O. EXT., AND
WASHINGTON AQUEDUCT OFFICE,
Washington, March 17, 1855.

Messrs. Mechlin and Alexander, care of Hamilton Mechlin, esq., Washington:

DEAR SIRS: Your letter of the 16th is received. You deny all responsibility in the matter of suretyship in the contract of Wm. H. Degges & Co., for the Washington aqueduct.

Upon reading over the advertisement, which, as you say, is part of the contract, I feel no doubt in my own mind of your continued liability as their sureties.

The contingency of an appropriation by Congress was expressly referred to in the advertisement, and the contract makes no mention of the session of 1854.

Should Messrs. Degges & Co. fail to supply the bricks required under the contract, it will be for the courts to determine upon the question of your liability. As you intimate an intention to dispute the matter, I have thought it right to call upon Messrs. Degges & Co. for evidence of their ability to fulfil their engagements, and for additional security.

Respectfully, your ob't serv't,

M. C. MEIGS,
Capt. Eng. in Charge.

Exhibit D 2.

WASHINGTON, *April* 14, 1855.

Capt. M. C. Meigs, U. S. Eng., in charge of the Washington aqueduct:

DEAR SIR: Our recent personal interviews with you in relation to our connection as sureties, have led us cheerfully to state that we desire to recall our letter to you of the 31st ult., in which we disclaim our present liability as the sureties of Messrs. Degges & Smith for the supply of bricks for the Washington aqueduct; that we therefore are willing to be regarded as fully responsible for the execution of the contract to the extent of our bond, and that if the contractors fail to comply with any of the requirements of their contract, we will carry out the contract ourselves, though, as we have repeatedly informed them and others, that we would greatly prefer to be fully indemnified for the expenses we have incurred in the matter, and released from all liability as sureties.

If we, as sureties, have to furnish the bricks, (from inability of the contractors,) we urgently ask to be apprised of the fact
13 as early as practicable, for now every day's delay will impede and embarrass our necessary preparations.

We are, sir, very respectfully, your ob't serv'ts,

A. H. MECHLIN.
C. ALEXANDER.

Exhibit D 3.

U. S. CAP. EXT., P. O. EXT., AND
WASHINGTON AQUEDUCT OFFICE,
Washington, April 16, 1855.

Messrs. Mechlin and Alexander, care of H. Mechlin, esq., Washington:

DEAR SIRS: I enclose a copy of the Comptroller's reply to my letter of inquiry in regard to payments to sureties.

I have again notified Messrs. Degges & Co. that they should lose no time in supplying the evidence of ability to go on with their contract.

I am, respectfully,

M. C. MEIGS, *Capt. Eng.*

Exhibit D 4.

TREASURY DEPARTMENT,
Second Comptroller's Office, April 14, 1855.

Capt. M. C. Meigs, superintendent for Capitol:

SIR: Your letter of yesterday, in regard to the apprehended failure of Messrs. Degges & Smith to fulfil their contract for furnishing bricks was received to-day.

If Degges & Smith should fail to perform their contract, and the sureties should go on and fulfil it, payment for the bricks might, I think, be properly made to them on their receipts, upon the ground that the case comes within the reason of the general rule of law, that a surety who pays the debt of his principal stands in his place, and may avail himself of all the securities for the debt held and acquired by him, as well as of all the rights and remedies which he would have thereupon.

It is also competent for you, in case of the failure of the contractors to comply with their agreement, to purchase the bricks of the sureties, at the contract price, and their receipts for payment in such a case would be valid, and could not be invalidated by the protest or claim of the contractors.

I am, very respectfully,

J. M. BRODHEAD,
Comptroller.

14 *Exhibit D* 5.

U. CAP. EXT., P. O. EXT., AND
WASHINGTON AQUEDUCT OFFICE,
Washington, April 26, 1866.

Messrs. Mechlin and Alexander, sureties on the contract of Messrs. Degges & Smith, for bricks for the Washington aqueduct:

GENTLEMEN: Messrs. Degges & Smith having failed to give the proper evidence of preparation for the completion of their contract

for bricks by the time specified in my letter to them of the 18th inst., I have now to call on you, their sureties, to undertake the work and make provision for the completion of the contract.

The first delivery of bricks should be at a point just below the second tunnel, where the foundation for about 180,000 is already prepared.

This delivery should begin by the first of May, and continue as fast as we can prepare for laying them.

The next point will probably be at the culvert opposite the 11th mile stone on the canal, where a party are now digging the culvert pit.

I am, very respectfully, your ob't serv't,

M. C. MEIGS, *Capt. Eng.*

Exhibit E.

*This indenture, made the thirtieth day of May, in the year of our Lord one thousand eight hundred and fifty-five, between William H. De Groot and Alice, his wife, of the first part, and Harrison Bowen, of the city of Washington, in the District of Columbia, of the second part:

Whereas Alexander H. Mechlin and Columbus Alexander, both of the city of Washington, in the District of Columbia, by their joint and several bond to the United States, bearing date on the 7th day of January, 1854, became the sureties of William H. Degges and Francis H. Smith, that they, the said Degges & Smith, should well and truly execute a contract which they, the said Degges & Smith, had entered into with Captain Montgomery C. Meigs, of the United States corps of engineers, which contract was thereunto annexed, bearing date on the 23d day of January, 1854; and whereas the said Degges & Smith having failed to perform the said work, and the said Meigs having required of the said Mechlin and Alexander the performance by them of the said contract, as sureties as aforesaid, the said Mechlin and Alexander made and entered into a contract with the said William H. De Groot, bearing date on the 9th day of May, 1855, in which it was, among sundry other stipulations and agreements therein contained, provided and agreed that the said William H. De Groot should furnish and deliver at the times, places, and in the manner which the said Mechlin and Alexander may be required to do, bricks of the kind and quality required to be delivered and furnished by the said contract with said Meigs, for which the said Mechlin and Alexander agreed therein to pay to the said William H. De Groot the price stipulated in the said agreement between them; and whereas in the said agreement it was also, among sundry other stipulations and agreements, provided and declared that to enable the said De Groot to manufacture the said bricks, he, the said De Groot, had agreed to purchase of the said Mechlin and Alexander a tract, piece, or parcel of land,

containing about fifty acres, situated in Montgomery county, Maryland, being the land purchased by them of Charles G. E. Rosenthall, by deed dated 7th day of February, 1854, and of John Tarman, by deed dated 20th day of March, 1854, and all the buildings, machinery, and implements thereon at the date of the said agreement with the said De Groot; also a canal boat then in or near Georgetown, and a certain quantity of iron castings which had been purchased by the said Mechlin and Alexander for the kilns, at and for the sum of ten thousand dollars, that being an indemnification in part to them for the amount expended by them in the purchase of the said land, implements, and buildings, with interest thereon, and a reasonable amount for their trouble and time in the premises up to the 23d of April last; which sum was agreed to be paid on the execution of the said agreement with the said De Groot, which land, implements, buildings, and other property (being the same hereinafter conveyed) the said Mechlin and Alexander agreed, on the execution of the said agreement with the said De Groot, to convey to the said De Groot by a good and sufficient deed of conveyance in fee, with special warranty; whereupon, and simultaneous therewith, the said De Groot agreed to execute and deliver to the said Mechlin and Alexander a good and sufficient deed of trust, to such trustee as they should name, upon the said lands, implements, buildings, and other property, upon the following trusts, to wit: that in case of the failure of the said De Groot in the furnishing and delivery of the said bricks, in accordance with the said contract with the said Meigs, it shall and may be lawful for the said trustee to enter upon the same, and deliver the possession thereof to the said Mechlin and Alexander, to be held by them until they, as sureties as aforesaid, shall have completely and entirely performed and fulfilled the said contract with the said Meigs; and further, in that event, after the said contract shall have been so fulfilled by the said Mechlin and Alexander upon this further trust, that the said land, implements, buildings, and other property, so as aforesaid specified, shall be sold by the said trustee at public or private sale, and on such terms and notice, and at such times and place, as the said trustee shall deem most expedient for all the parties concerned, and out of the proceeds arising from such sale shall pay to the said Mechlin and Alexander the full amount of the damages they may sustain by the failure aforesaid, and the balance, if any, shall pay to the said William H. De Groot or his assigns. And whereas the said Mechlin and Alexander, by a good and sufficient deed of conveyance in fee, with special warranty, that is to say, by deed with the same date herewith, by and between the said Mechlin and wife and the said Alexander and wife, of the one part, and the said De Groot, of the other part, have conveyed to the said De Groot, his heirs, executors, administrators, and assigns, the said land, implements, buildings, and other property above specified, and the said De Groot, in order to carry out his agreement afore-
16 said with the said Mechlin and Alexander, is willing and anxious to convey the said land, implements, buildings, and

other property above specified, in the manner hereinafter contained and upon the trusts and for the purposes hereinafter declared:

Now, this indenture witnesseth, that the said parties of the first part, for and in consideration of the premises, and of the sum of five dollars, lawful money of the United States, to them in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, (the receipt whereof is hereby acknowledged,) they, the said parties of the first part, have granted, bargained, and sold, assigned, transferred, and set over, and by these presents do grant, bargain, and sell, assign, transfer, and set over, unto the said party of the second part, his heirs, executors, administrators, and assigns, the following tract, piece, or parcel of land, and the following personal property, to wit: all that certain tract, piece, or parcel of land situate. lying, and being in the county of Montgomery, in the State of Maryland, which was conveyed to the said Alexander H. Mechlin and Columbus Alexander by two several deeds, one part thereof by a deed bearing date on the 7th day of February, 1854, by and between Charles Gustav Edward Rosenthall, of the first part, and the said Alexander H. Mechlin and the said Columbus Alexander, of the second part, which deed is recorded in Liber J. G. H., No. 3, folios 71 and 72, one of the land records of the circuit court of the said county of Montgomery; the piece of land so conveyed by said Rosenthall being bounded on the southern side by the Chesapeake and Ohio canal, and known and termed as "Hunting Park," being the same tract or parcel of land which was sold and conveyed to the said Rosenthall by Barbara Hunt, (formerly Barbara Stump,) by deed of conveyance executed by the said Hunt on the 15th day of February, in the year 1844, recorded in Liber B. S., No. 12, on folios 142 and 143, one of the land records of said county of Montgomery; the other part thereof, that is to say, the other part of the said tract, piece, or parcel of land hereby intended to be conveyed, was conveyed to the said Mechlin and Alexander, by a deed bearing date on the 20th day of March, 1854, between John Tarman and Mary Tarman, his wife, of the first part, and the said Alexander H. Mechlin and the said Columbus Alexander, of the second part, which deed is recorded in Liber J. G. H., No. 3, folios 154, 155, and 156, one of the land records of the circuit court for Montgomery county, to which deeds from the said Rosenthall and the said Tarman and wife to the said Mechlin and Alexander, for a more particular description of the pieces or parcels of land constituting the tract, piece, or parcel of land herein conveyed, reference is hereby particularly made, together with all and singular the buildings, improvements, rights, woods, ways, water-courses, members, privileges, appurtenances, and other hereditaments to the same belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and of every part and parcel thereof, and all the estate, right, title, interest, claim, and demand whatsoever, legal and equitable, of them, the said parties of the first part, of, in, and to the same. Also, all and singular the sheds, machinery, and im-

plements which were on the 9th day of May, 1855, the date of the agreement hereinbefore referred to between the said Mechlin and Alexander and the said De Groot, on the said tract, piece, or parcel of land; also, a canal-boat, then in or near
17 Georgetown, in the District of Columbia, and a certain quantity of iron castings which were purchased by the said Mechlin and Alexander for the kilns, (the said tract, piece, or parcel of land hereby conveyed, and the said personal property being the same conveyed by the said Mechlin and wife and the said Alexander and wife to the said De Groot by deed of the same date herewith.) To have and to hold the said tract, piece, or parcel of land hereinbefore granted, bargained, and sold, or mentioned, or intended so to be, with the appurtenances, and all and singular the personal property above described and conveyed, unto the said party of the second part, his heirs, executors, administrators, and assigns forever, to the only proper use and behoof of the said party of the second part, his heirs, executors, administrators, and assigns forever. Upon trust, nevertheless, and to and for the following uses, intents, and purposes, and none other—that is to say, to permit the said William H. De Groot, his heirs, executors, administrators, or assigns, to remain in quiet and peaceable possession of the said lands and appurtenances, and to receive the rents and profits thereof without account, and to remain in possession of and to use and employ the said buildings, implements, machinery, and other property, hereinbefore conveyed, until default is made under the terms of this deed; and then upon this further trust, that in case of the failure of the said William H. De Groot, his executors or administrators, in the furnishing and delivery of bricks in accordance with the said contract with the said Meigs, it shall and may be lawful for the said party of the second part, or his heirs, whenever after thereto requested by the said Mechlin and Alexander, or either of them, their executors, administrators, or assigns, to enter upon the said tract, piece, or parcel of land, and to take possession of the buildings, implements, machinery, and other property aforesaid, and to deliver possession of the same to the said Mechlin and Alexander. their respective heirs, executors, administrators, or assigns, to be held by them, their executors, administrators, or assigns, from the time of such default until they, the said Mechlin and Alexander, their executors, administrators, or assigns, shall have completely and entirely performed and fulfilled said contract with the said Meigs, or so much thereof as may then remain unperformed; and further, in that event, after the full and entire completion and performance of the said contract with the said Meigs by the said Mechlin and Alexander, their executors, administrators, or assigns, upon this further trust that the said tract, piece, or parcel of land and appurtenances, and the said implements, buildings, machinery, and other property aforesaid, shall be sold by the said party of the second part, or his heirs, at public or private sale, and on such terms and notice and at such times and place as the same party of the second part, or his heirs, shall deem most expedient for all the

parties concerned. And out of the proceeds arising from such sale shall, after first satisfying the expenses thereof and this trust, including a reasonable commission to the trustee for his services in executing the trust, pay to the said Mechlin and Alexander, their executors, administrators, or assigns, the full amount of the damages they may sustain by the failure aforesaid, and the balance, if any, shall pay to the said William H. De Groot, his executors, administrators, or assigns, and shall convey the premises sold to the purchaser or purchasers thereof. But if, on the contrary, the said William H. De Groot, his executors, administrators, or assigns,
18 shall fully and completely furnish and deliver all the bricks which may be required by the said contract with the said Meigs to be furnished and delivered, and in accordance with the same, so that there shall be no failure of the said De Groot, his executors, administrators, or assigns, in the furnishing and delivering of bricks in accordance with the said contract with the said Meigs, then this indenture shall cease, determine, and be absolutely void, and the premises hereinbefore conveyed be forever released and fully discharged from all incumbrance and lien created by virtue of this instrument, and the said trustee shall in that event release the said premises to the said De Groot, his executors, administrators, or assigns.

And the said William H. De Groot, for himself, his heirs, executors, and administrators, doth covenant, promise, and agree to and with the said party of the second part, his heirs, executors, administrators, and assigns, in the manner following, to wit, that he, the said William H. De Groot, his heirs, executors, and administrators, the said tract, piece, or parcel of land and appurtenances, and the said implements, machinery, buildings, and other property hereinbefore conveyed unto the said party of the second part, his heirs, executors, administrators, and assigns, against him, the said William H. De Groot, his heirs, executors, and administrators, and against all and every person or persons claiming or to claim by, from, or under him, them, or any of them, shall, will, and do warrant, and forever defend by these presents; and further, that he, the said William H. De Groot, his heirs, executors, administrators, and assigns, shall and will do no act, or manner of act, directly or indirectly, to hinder or retard the said party of the second part, and his heirs, in the due execution and fulfilment of this trust, and that in case of the failure of the said De Groot, his executors, administrators, or assigns, in the furnishing and delivery of bricks in accordance with the said contract with the said Meigs, the said trustee, or his heirs, may peaceably enter upon and possess the said land, implements, buildings, and other property aforesaid for the purposes of this trust; and upon sale thereof, according to the terms of this trust, may peaceably transfer and convey the same to the purchaser or purchasers by a good and sufficient deed free from all claim, interference, or demand whatsoever on the part of the said William H. De Groot, his executors, administrators, or assigns.

In witness whereof the said parties of the first part have hereunto

set their hands and affixed their seals the day and year first hereinbefore written.

[L. S.] WM. H. DE GROOT.
[L. S.] ALICE E. DE GROOT.

Signed, sealed, and delivered in the presence of—
J. B. NONES.
EDMUND DENY.

UNITED STATES OF AMERICA,
State of New York, City and County of New York, ss:

By this public instrument be it remembered that on this fourteenth day of June, A. D. one thousand eight hundred and fifty-five, before me, the subscriber, Joseph B. Nones, a commissioner in and for the State of New York, appointed by the governor of the State of Maryland to take proof and acknowledgment of deeds, mortgages, letters of attorney, or any other instrument to be used or recorded in
19 the State of Maryland, and to administer oaths and affirmations, take depositions, &c., &c., appeared William H. De Groot and Alice E. De Groot, his wife, the persons described in and who executed the annexed instrument, (between them as one of the parties thereto and A. H. Mechlin and another, the other party thereto.) and acknowledged to me that they severally executed the said instrument voluntarily and freely for the uses and purposes therein stated. And the said Alice E., wife of the said W. H. De Groot, on being by me made fully acquainted with the contents of said annexed instrument on an examination by me privately, separate, and apart from her said husband, acknowledged to me, on such private examination as aforesaid, that she executed the said instrument voluntarily and freely, without any fear, coercion, or compulsion of her said husband, or of any other person or persons whatsoever.

And I further certify that I know the persons who made the said acknowledgment to be the identical persons described in and who executed the said annexed instrument.

In testimony whereof I have hereunto subscribed my name and affixed my official seal the year, month, and day first before written.

[L. S.] J. B. NONES,
Commissioner of the State of Maryland for the State of New York as aforesaid.

UNITED STATES OF AMERICA, *State of New York, ss:*

By this public instrument be it known to all whom the same doth or may in anywise concern, that I, Joseph B. Nones, a public notary in and for the State of New York, by letters patent under the great seal of said State, duly commissioned and sworn, dwelling in the city of New York, do hereby certify that on the day of the date hereof, before me, personally appeared William H. De Groot and Alice E. De Groot, his wife, the persons described in and who executed the annexed instrument, (between them as one of the parties thereto, and A. H. Mechlin and another, the other party thereto,) and ac-

knowledged to me that they severally executed the said instrument voluntarily and freely for the uses and purposes therein expressed. And the said Alice E., wife of the said Wm. H. De Groot, being by me first made fully acquainted with the contents of said annexed instrument on an examination by me privately, separate from and without the hearing of her said husband, acknowledged to me, on such private examination as aforesaid, that she executed the said instrument voluntarily and freely as her voluntary act and deed, without any fear, coercion, or compulsion of her said husband, or of any other person or persons whatsoever, and relinquished her dower in the lands and tenements therein mentioned, and did not wish to retract the same.

And I further certify that I know the persons who made the said acknowledgment to be the identical persons described in and who executed the said annexed instrument.

In testimony whereof I have subscribed my name and caused my official notarial seal to be hereunto affixed, the 14th day of June, in the year of our Lord one thousand eight hundred and fifty-five, in the 79th year of the independence of the United States of America.

[L. S.] J. B. NONES,

Notary Public of the State of New York.

20 *Exhibit F*, 1.

Whereas William H. Degges, of the city of Washington, and Francis H. Smith, of the city of Baltimore, Maryland, on the 23d day of January, A. D. 1854, contracted with Montgomery C. Meigs, a captain in the engineer corps of the United States, acting for and in behalf of said United States, to furnish and deliver, in conformity with the stipulations and conditions contained in said contract, certain bricks for the construction of the "Washington aqueduct," then and now under the charge and superintendence of said Meigs; and whereas Alexander H. Mechlin and Columbus Alexander, both of said city of Washington, became on the 27th day of January, A. D. 1854, sureties to the United States under a bond for thirty thousand dollars, that the said Degges and Smith, as contractors aforesaid, should well and truly carry out and fulfil the said contract; and, in order to secure the same, the said Mechlin and Alexander purchased jointly out of their individual means certain tracts or parcels of land lying and situated in Montgomery county, Maryland, on the line of said aqueduct, and containing abundance of clay suitable for the manufacture of bricks for the same. And whereas the said Degges & Smith having failed to comply with the conditions and requirements of said contract, and the said Meigs having officially notified the said Mechlin and Alexander, as sureties aforesaid, of the said failure, and required them, as sureties, to carry on and fulfil said contract; and whereas, for the purpose and intent of so doing, the said Mechlin and Alexander (though reluctant to do so, and which they never contemplated to be called on to do, when they became the sureties of said Degges & Smith) contracted on the 9th day of May, A. D. 1855, with William H. De Groot, of the city of New York, to make, fur-

nish, and deliver for them (the said Mechlin and Alexander) bricks for the said aqueduct, in conformity with the contract entered into as aforesaid between the said Degges & Smith and said Meigs; in which said contract with said De Groot it was stipulated and provided that he (the said De Groot) was to receive the contract price of said bricks, to wit, eight dollars and seventy-five cents per thousand, by which the said Mechlin and Alexander relinquished to said De Groot all the profits which reasonably would inure to them from said contract; provided he, the said De Groot, in all respects, without any fail, faithfully complied with and fulfilled all the requirements contained in said contract of Degges & Smith with said Meigs; and further, that the said De Groot, in consideration of the said Mechlin and Alexander not having required from the said De Groot a bond of indemnity, to protect them as sureties aforesaid, and of their continuing their heavy responsibility, as said sureties, without
21 such protection, for said consideration, and for such only, he, the said De Groot, stipulated and agreed to pay to the said Mechlin and Alexander five per centum on all the sums of money that might be received from the United States, the same per centum to be paid to the said Mechlin and Alexander, "at the times" when the said moneys was received; and further, in order that the said De Groot might be enabled to receive from the government of the United States the moneys which might from time to time accrue and be due on account of bricks delivered under said contract, they, the said Mechlin and Alexander, in said contract or agreement with said De Groot, of the 9th of May, 1855, aforesaid, agreed and stipulated to execute, in favor of said De Groot, a power or warrant of attorney "for the receipt of said sum of eight dollars and seventy-five cents per thousand, (for the furnishing and delivery of said bricks,) from the United States; which power of attorney, when given, shall be exercised by him as long as" said contract between him and said Mechlin and Alexander "is truly and faithfully performed by him," the said De Groot;) which said power of attorney, in compliance with said agreement with said De Groot, was duly executed by the said Mechlin and Alexander, and which power of attorney, furthermore, empowered and authorized the said De Groot to substitute and appoint in his place and stead, as the attorney of said Mechlin and Alexander, such person or persons as he might think proper; and that, under said authority of substitution, the said De Groot authorized and appointed Daniel S. Darling, of Brooklyn, New York, to act for him fully as such said attorney; and whereas, in conformity with the agreement of the 9th of May, 1855, aforesaid, with the said De Groot, as entered into and stipulated by the said Mechlin and Alexander, in order to facilitate and further the complete and faithful fulfilment by said De Groot of the aforesaid contract with the United States for the due supply, manufacture, and delivery of bricks for said aqueduct, as specified in said contract, the said Mechlin and Alexander, with their respective wives, severally and jointly, duly executed a deed of conveyance, on the 30th day of May, A. D. 1855, with special warranty, in favor of the said De Groot, by which deed

of conveyance the land purchased as aforesaid, in Montgomery county, Maryland, by the said Mechlin and Alexander, with all the appurtenances, tenements, implements, and other property appertaining thereto, or which had been purchased or procured by said Mechlin and Alexander, for the manufacture and supply of bricks for the Washington aqueduct aforesaid, was duly conveyed to said De Groot; and whereas the said De Groot, in order to insure and secure the full and faithful compliance of his agreement of the 9th of May,
22 1855, aforesaid, with the said Mechlin and Alexander, executed, jointly with his wife, a deed of trust in favor of Harrison Bowen, trustee in behalf and for the benefit of said Mechlin and Alexander, by which deed of trust the said land, implements, etc., as specified in same deed of trust, (which is recorded in the office of the county clerk, at Rockville, Maryland, the county seat of the county of Montgomery, Maryland,) was to revert to the use and benefit of said Mechlin and Alexander, until the fulfilment of the said contract with the United States, in case the said De Groot failed to comply with his agreement of the 9th of May, 1855, with the said Mechlin and Alexander.

And whereas the said Captain Montgomery C. Meigs, acting for and in behalf of the United States, as aforesaid, did, on the 1st of February, 1856, address to the said Mechlin and Alexander an official communication, inclosing a letter to him, the said Meigs, from his assistant, who, under the said Meigs, has charge of the works at the said Washington aqueduct, (dated on the 26th of January, 1856,) in which letter the said assistant (W. H. Bryan, esq.,) states to the said Meigs, and reports that "during the summer and fall of 1855, in consequence of the failure of the contractors to deliver brick when required, there were purchased of" other persons than the said De Groot or Darling (the attorney and sub-attorney of said Mechlin and Alexander) 665,411 bricks for said aqueduct; the money for such purchase was paid directly to such other persons, and the amounts thus paid by said Meigs were charged on his books to the said Mechlin and Alexander, which was a clear and palpable violation of the agreement between the said De Groot and the said Mechlin and Alexander.

And whereas the said De Groot associated himself in copartnership with Charles Stearns, of New York, and with the said Daniel S. Darling, (under the style and title of "Daniel S. Darling and Company,") to carry on and fulfil the said contract with the United States, in virtue of the authority to fill said contract, conferred on the said De Groot by the said Mechlin and Alexander; and the said Charles Stearns, one of the partners of said firm, has duly notified, in writing, the said Mechlin and Alexander that said firm had failed in business and dissolved, and placed their affairs under assignment for the benefit of their creditors.

And whereas, further, inasmuch as the said De Groot and his substituted attorney, Daniel S. Darling, have received from the said Meigs, on account of bricks delivered for the said aqueduct, sum or sums of money, the five per centum of which they, or each of them, or either

of them, have neglected to pay over to the said Mechlin and Alexander "at the time" when the same was received, as provided for in
23 the agreement between the said De Groot and the said Mechlin and Alexander, as hereinbefore stated; and inasmuch as the said Daniel S. Darling has been notified by said Mechlin and Alexander of this and other violations of their agreement with said De Groot, and has been requested promptly to pay said five per centum, long since due to said Mechlin and Alexander; and, further, to furnish to said sureties satisfactory evidence that the said contract with the United States should no longer be neglected and mismanaged as it has been heretofore by said De Groot and Darling. And whereas such payment of the said five per centum due has not been made, and no such satisfactory evidence has been furnished as requested—the said De Groot having thus neglected the faithful fulfilment with the United States of said contract to furnish bricks, and having also thus violated his agreement with Mechlin and Alexander, they, the said Mechlin and Alexander, cannot feel any reasonable confidence that he will hereafter not neglect and mismanage the public contract for bricks, and disregard his plighted obligations to his principals:

Therefore, we, the undersigned, the said Alexander H. Mechlin and Columbus Alexander, in order to insure the efficient and satisfactory fulfilment of said contract with the United States, and to protect themselves as sureties aforesaid, are compelled to make other arrangements to secure those objects, and so revoke and cancel the power of attorney heretofore executed in favor of the said De Groot, and for these purposes the following agreement is entered into:

Agreement between Alexander H. Mecklin and Columbus Alexander, of the city of Washington, sureties of William H. Degges and Francis H. Smith, late contractors to furnish bricks for the Washington aqueduct, and now (the said contractors having failed) contractors for the same, in virtue of their suretyship of the first part; and Henry Kellogg, of Clinton, in the State of Massachusetts, of the second part.

In consideration of the facts and reasons recited and set forth in the foregoing preamble, the said parties of the first part, for themselves, their respective heirs or assigns, are induced to make, and hereby make, the following agreement, stipulations, and conditions with the said party of the second part, his heirs or assigns:

First. The said party of the second part shall furnish and deliver bricks for the Washington aqueduct, in strict compliance with all the provisions, requirements, and conditions of the contract for said bricks entered into and agreed on between William H. Degges and Francis H. Smith, and Capt. Montgomery C. Meigs, in behalf
24 of the United States, on the 23d day of January, 1854, (the said parties of the first part being sureties, and now also substitutes of said Degges & Smith,) and also to the entire satisfaction of said Meigs, or of such other officer or person as may have the charge and superintendence of the said aqueduct.

Second. For all such brick so furnished and delivered, the said party of the second part are to receive, under a power of attorney from the said parties of the first part, the full price as stipulated in said contract, to wit, eight dollars and seventy-five cents per thousand, subject to the deductions specified in said contract.

Third. The said parties of the first part hereby agree to revoke and cancel the power of attorney heretofore given and executed by them in favor of William H. De Groot, of New York, and to execute another such instrument in favor of the said party of the second part, to be exercised by him so long, and no longer, as he shall truly, in all respects and every particular, promptly, efficiently, and faithfully carry out and fulfil each and every stipulation, condition, and requirement of this agreement.

Fourth. The agreement heretofore (on the 9th of May, 1855) made by the parties hereto of the first part with the said De Groot having been violated by him, and he having failed to fulfil the said contract with the United States, as has been officially notified to the said parties of the first part by the said Captain Meigs, the said parties of the first part hereby agree to relinquish and transfer to the said party of the second part all the right, title, interest, and benefit they claim and possess in certain tracts or parcels of land situate in Montgomery county, Maryland, under the said agreement with the said De Groot, as aforesaid, and under a certain deed of trust executed for the use and benefit of said parties of the first part by the said De Groot and wife, in favor of Harrison Bowen, trustee, subject to all the rights and interest of the said De Groot, as set forth and contained in said deed of trust.

Fifth. That if, from any cause or causes, or if in any way the said party of the second part hereto shall fail to carry out fully, and in every respect and particular, all and every of the provisions and stipulations of this agreement, then, and in such event, the said power of attorney, to be given as aforesaid, is subject to be revoked and cancelled by the said parties of the first part, or by either of them, or by their respective heirs or assigns. And on the happening of such failure of the said second party, his heirs or assigns, the said land, tenements, implements, tools, et cetera, as specified in said deed of trust to Harrison Bowen, trustee aforesaid, are, without delay, hindrance, dispute, objection, or litigation in any way, on the part of the said party of the second part, his heirs or assigns, attorney or attorneys, or by or with his instrumentality or assent, to be forthwith surrendered, delivered up, and turned over to the said parties of the first part, or to their respective heirs or assigns, for the purpose of fulfilling to completion said contract for bricks with the United States; and further, and moreover, whatever machinery, tools, implements, and other personal or mixed property or estate the said party of the second part, his heirs or assigns, may purchase or procure for the manufacture, furnishing, and delivery of bricks, in fulfilment of said contract with the United States, shall, in like manner, without delay or objection, be surrendered, relinquished, transferred, given up, and made over by the said party of the second part, his heirs or assigns, to the said parties of the first part, their

respective heirs or assigns, for the purpose of enabling the said parties of the first part, their heirs or assigns, duly and without delay to carry on and fulfil said contract for bricks with the United States. The said property, machinery, tools, implements, et cetera, procured or purchased as aforesaid, shall, on the fulfilment of said contract by the said parties of the first part, their respective heirs or assigns, be sold and disposed of by said trustee, for the benefit of said party of the second part, his heirs or assigns, under the same terms and conditions as are specified and declared in the said deed of trust, executed as aforesaid, by said William H. De Groot and wife, in favor of Harrison Bowen, trustee, aforesaid.

Sixth. That in consideration of the said parties of the first part not requiring from the said party of the second part a bond of indemnity to protect said first party in their liability to the United States for $30,000 as sureties aforesaid, and in consideration of their remaining such sureties without such protection—and for no other consideration whatever—the said party of the second part, his heirs or assigns, hereby further agree and promise to pay promptly, and without delay, to the said parties of the first part, their respective heirs or assigns, a compensation of five per centum on each and every gross sum of money that may be due or owing to the said party of the second part, his heirs or assigns, and of each and every gross sum or sums of money which Capt. Montgomery C. Meigs, or his successor or successors in office, may have occasion to pay to any person or persons other than the said party of the second part, his heirs or assigns, in order to protect the interests of the United States, and to carry on and secure the due fulfilment of said contract for bricks for the Washington aqueduct.

Seventh. That the said parties of the first part are to give and execute the said power of attorney to the said party of the second part, his heirs or assigns, empowering him, as attorney for said parties of the first part, to receive all moneys from the United States due on account of said brick contract, and to act gen-
26 erally in relation to all business of such contract, as the agent and attorney of said parties of the first part; provided, only, that all sum or sums of money now due and owing to either or both of the said Alexander H. Mechlin and Columbus Alexander, by the said Wlliam H. De Groot, or by the said firm of Daniel S. Darling & Company, or by any member of that firm, shall be fully paid by the said party of the second part to the said Mechlin and Alexander, respectively, before said power of attorney be executed by them—the said payments to be made on or before the 18th day of March, 1856, otherwise this agreement to be null and void.

In witness whereof the parties to this agreement have hereunto set their hands and seals, this 3d day of March, 1856. Executed in triplicate.

[SEAL.] A. H. MECHLIN.
[SEAL.] C. ALEXANDER.
[SEAL.] H. KELLOGG.

Signed, sealed, and delivered in presence of—
L. E. STEARNES.

Exhibit F 2.

Know all men by these presents, that we, the undersigned, Alexander H. Mechlin and Columbus Alexander, both of the city of Washington, D. C., (influenced by good and sufficient reasons to do so,) do hereby revoke, cancel, and annul the warrant of attorney executed by us on the 25th day of July, A. D. 1855, whereby we duly constituted and appointed Wm. H. De Groot, of New York, our attorney in relation to a certain contract to furnish and deliver bricks for the Washington aqueduct, entered into on the 23d day of January, A. D. 1854, and consequently, we hereby revoke, cancel, and annul all the authority, right, and power conferred in said instrument of writing upon him (the said De Groot,) or upon any other person or persons to whom he has or may have delegated his said power or authority, as our said attorney.

And in view thereof, we, the said undersigned, hereby constitute and appoint Henry Kellogg, of the State of Massachusetts, for us, and each of us, our true and lawful attorney, and in our names and seals, to receive from the proper officers of the United States all sum or sums of money due, or which may hereafter be due, and owing to us under said contract for bricks furnished for said aqueduct, and generally in our names and stead to transact all business in relation to said contract. Our attorney, the said Henry Kellogg, being hereby authorized and empowered by us, to give, make and execute for us, and in our names, all sufficient receipts and acquittances that may be required for payments under said contract, on account of bricks furnished in conformity thereto, the same to be regarded as if made and executed by ourselves in person. And we further hereby authorize and empower our said attorney (the said Henry Kellogg)
27 to delegate, transfer and assign all the rights, power, and authority hereby conferred upon him, to any person or persons, attorney or attorneys, acting under him, he may duly authorize so to act.

In witness whereof we, the said Alexander H. Mechlin and Columbus Alexander, have hereunto appended our hands and seals, on this twenty-sixth day of March, A. D. 1856.

[SEAL.] A. H. MECHLIN.
[SEAL.] C. ALEXANDER.

This is to certify that the foregoing instrument of writing, was, on the date above written, subscribed and acknowledged before me (the undersigned notary public, in and for the county and city of Washington, District of Columbia, duly commissioned and sworn by the said Alexander H. Mechlin and Columbus Alexander, (both of whom are personally known to *to* me,) to be their joint and several acts and deeds.

In testimony whereof I hereunto append my signature and official seal on the day and year above written.

[L. S.] CHARLES N. BRADLEY,
Notary Public.

CAPITOL EXT. AND WASH. AQU. OFFICE, *Washington.*

True copy from original in this office.

respective heirs or assigns, for the purpose of enabling the said parties of the first part, their heirs or assigns, duly and without delay to carry on and fulfil said contract for bricks with the United States. The said property, machinery, tools, implements, et cetera, procured or purchased as aforesaid, shall, on the fulfilment of said contract by the said parties of the first part, their respective heirs or assigns, be sold and disposed of by said trustee, for the benefit of said party of the second part, his heirs or assigns, under the same terms and conditions as are specified and declared in the said deed of trust, executed as aforesaid, by said William H. De Groot and wife, in favor of Harrison Bowen, trustee, aforesaid.

Sixth. That in consideration of the said parties of the first part not requiring from the said party of the second part a bond of indemnity to protect said first party in their liability to the United States for $30,000 as sureties aforesaid, and in consideration of their remaining such sureties without such protection—and for no other consideration whatever—the said party of the second part, his heirs or assigns, hereby further agree and promise to pay promptly, and without delay, to the said parties of the first part, their respective heirs or assigns, a compensation of five per centum on each and every gross sum of money that may be due or owing to the said party of the second part, his heirs or assigns, and of each and every gross sum or sums of money which Capt. Montgomery C. Meigs, or his successor or successors in office, may have occasion to pay to any person or persons other than the said party of the second part, his heirs or assigns, in order to protect the interests of the United States, and to carry on and secure the due fulfilment of said contract for bricks for the Washington aqueduct.

Seventh. That the said parties of the first part are to give and execute the said power of attorney to the said party of the second part, his heirs or assigns, empowering him, as attorney for said parties of the first part, to receive all moneys from the United States due on account of said brick contract, and to act gen-
26 erally in relation to all business of such contract, as the agent and attorney of said parties of the first part; provided, only, that all sum or sums of money now due and owing to either or both of the said Alexander H. Mechlin and Columbus Alexander, by the said William H. De Groot, or by the said firm of Daniel S. Darling & Company, or by any member of that firm, shall be fully paid by the said party of the second part to the said Mechlin and Alexander, respectively, before said power of attorney be executed by them—the said payments to be made on or before the 18th day of March, 1856, otherwise this agreement to be null and void.

In witness whereof the parties to this agreement have hereunto set their hands and seals, this 3d day of March, 1856. Executed in triplicate.

[SEAL.] A. H. MECHLIN.
[SEAL.] C. ALEXANDER.
[SEAL.] H. KELLOGG.

Signed, sealed, and delivered in presence of—
L. E. STEARNES.

Exhibit F 2.

Know all men by these presents, that we, the undersigned, Alexander H. Mechlin and Columbus Alexander, both of the city of Washington, D. C., (influenced by good and sufficient reasons to do so,) do hereby revoke, cancel, and annul the warrant of attorney executed by us on the 25th day of July, A. D. 1855, whereby we duly constituted and appointed Wm. H. De Groot, of New York, our attorney in relation to a certain contract to furnish and deliver bricks for the Washington aqueduct, entered into on the 23d day of January, A. D. 1854, and consequently, we hereby revoke, cancel, and annul all the authority, right, and power conferred in said instrument of writing upon him (the said De Groot,) or upon any other person or persons to whom he has or may have delegated his said power or authority, as our said attorney.

And in view thereof, we, the said undersigned, hereby constitute and appoint Henry Kellogg, of the State of Massachusetts, for us, and each of us, our true and lawful attorney, and in our names and seals, to receive from the proper officers of the United States all sum or sums of money due, or which may hereafter be due, and owing to us under said contract for bricks furnished for said aqueduct, and generally in our names and stead to transact all business in relation to said contract. Our attorney, the said Henry Kellogg, being hereby authorized and empowered by us, to give, make and execute for us, and in our names, all sufficient receipts and acquittances that may be required for payments under said contract, on account of bricks furnished in conformity thereto, the same to be regarded as if made and executed by ourselves in person. And we further hereby authorize and empower our said attorney (the said Henry Kellogg) to delegate, transfer and assign all the rights, power, and au-
27 thority hereby conferred upon him, to any person or persons, attorney or attorneys, acting under him, he may duly authorize so to act.

In witness whereof we, the said Alexander H. Mechlin and Columbus Alexander, have hereunto appended our hands and seals, on this twenty-sixth day of March, A. D. 1856.

[SEAL.] A. H. MECHLIN.
[SEAL.] C. ALEXANDER.

This is to certify that the foregoing instrument of writing, was, on the date above written, subscribed and acknowledged before me (the undersigned notary public, in and for the county and city of Washington, District of Columbia, duly commissioned and sworn by the said Alexander H. Mechlin and Columbus Alexander, (both of whom are personally known to *to* me,) to be their joint and several acts and deeds.

In testimony whereof I hereunto append my signature and official seal on the day and year above written.

[L. S.] CHARLES N. BRADLEY,
Notary Public.

CAPITOL EXT. AND WASH. AQU. OFFICE, *Washington.*

True copy from original in this office.

Exhibit H.—Deed of surrender.

Whereas, on the 7th day of January, 1854, an agreement was made and entered into by and between William H. Degges and Francis H. Smith, of one part, and Captain Montgomery C. Meigs, of the other part, by which the said Degges and Smith agreed to furnish and deliver brick for the Washington aqueduct as in said agreement set forth:

And whereas Alexander Mechlin and Columbus Alexander, by their writing subjoined to said contract, became bound in the sum of $30,000, as sureties of said Degges and Smith, for their performance of said contract:

And whereas, afterwards, the said Mechlin and Alexander, as such sureties, upon the failure of Degges and Smith to perform the contract, were called upon and required to perform said contract, and became substituted parties, and agreed to perform the same:

And whereas, afterwards, on the 9th of May, 1855, by an agreement between the said Alexander Mechlin and Columbus Alexander, with William H. De Groot, of that date, the said De Groot did agree and contract to furnish and deliver the said brick pursuant to the terms of said original contract:

And whereas, afterwards, on the 3d day of March, 1856, by an agreement of that date between the said Mechlin and Alexander and Henry Kellogg, the said Kellogg did agree to furnish and deliver said brick according to the terms and conditions of said original contract of Degges and Smith.

All which will more fully appear by reference to said agreements, which for greater certainty are referred to.

28 And whereas, by a certain joint resolution of the Senate and House of Representatives in Congress assembled, passed and approved on the 3d day of March, 1857, it was

"*Resolved*, That the Secretary of the Treasury shall settle and adjust with all the parties respectively interested therein, on principles of justice and equity, all damages, losses, and liabilities incurred or sustained by said parties respectively on account of their contract for manufacturing brick for the Washington aqueduct; and he is hereby directed to pay the amount found due by such settlement and adjustment out of the appropriation made for paying the liabilities for the said aqueduct by the act 'making appropriations for certain civil expenses of the government for the year ending June thirtieth, eighteen hundred and fifty-seven,' approved the eighteenth of August, eighteen hundred and fifty-six: *Provided*, That the said parties first surrender to the United States all the brick made, together with all the machinery and appliances and other personal property prepared for executing the said contract, and that the said contract be cancelled;" as by said resolution will appear.

Now, in consideration of the premises and to effect the settlement and adjustment above referred to, and in compliance with the resolution aforesaid, the undersigned do hereby surrender to the United States "all the brick made, together with all the machinery and ap-

pliances and other personal property prepared for executing said contract;" and the said contract is hereby cancelled and given up.

In testimony whereof the said Alexander H. Mechlin, Columbus Alexander, William H. De Groot, and Henry Kellogg, have hereunto set their hands and affixed their seals, this 8th day of April, 1857.

[SEAL.] A. H. MECHLIN.
[SEAL.] C. ALEXANDER.
[SEAL.] WM. H. DE GROOT.
[SEAL.] HENRY KELLOGG.

In presence of--
EDWIN M. STANTON,
CHARLES NAYLOR.

DISTRICT OF COLUMBIA, *County of Washington, to wit:*

Be it remembered, and it is hereby certified, that on this twenty-second day of April, in the year of our Lord one thousand eight hundred and fifty-seven, before me, the subscriber, a commissioner of the State of Maryland, in and for the district and county aforesaid, to take the acknowledgments of deeds, and to take the acknowledgments and the proofs to other instruments in writing, which are to be used and recorded in said State, personally appears William H. De Groot, Henry Kellogg, Alexander H. Mechlin, and Columbus Alexander, they being known to me to be the persons who are named and described as, and professing to be, parties to the foregoing and annexed deed or instrument of writing, and they do acknowledge the said deed or instrument of writing to be their respective act and deed, and desire that the same may be received, recorded, and accredited as such.

In testimony whereof I have hereunto subscribed my name,
29 and affixed my official seal, as commissioner of deeds, &c., for the State of Maryland, in the District of Columbia.

[SEAL.] CHARLES DE SELDING,
Commissioner for the State of Maryland.

WASHINGTON CITY, *April* 8, 1857.

To Capt. Montgomery C. Meigs:

SIR: The undersigned, parties interested in the contract for manufacturing brick for the Washington aqueduct, respectfully inform you that, pursuant to the resolution of Congress of March 3, 1857, they have, by deed of this date herewith enclosed, surrendered to the United States all the brick made, together with all the machinery and appliances; and other personal property, prepared for executing the said contract, and cancelled the said contract. And they are ready and willing, and hereby offer, jointly and severally, to do any act or thing that may be necessary and proper for the surrender of said property and cancelment of said contract, pursuant to the resolution aforesaid.

If, in your judgment, anything further be required for the purpose

aforesaid, they request that you will give them notice thereof, in order that it may be done.

Yours, &c.,

A. H. MECHLIN.
C. ALEXANDER.
WM H. DE GROOT.
H. KELLOGG.

Exhibit I.

To the honorable Howell Cobb, Secretary of the Treasury of the United States:

The undersigned, William H. De Groot, Henry Kellogg, Alexander H. Mechlin, and Columbus Alexander, parties interested in the contract for manufacturing brick for the Washington aqueduct, respectfully represent:

I. That on the 3d day of March a joint resolution was duly passed by Congess, and approved, as follows:

"*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled*, That the Secretary of the Treasury shall settle and adjust with all the parties respectively interested therein, on principles of justice and equity, all damages, losses, and liabilities incurred or sustained by said parties, respectively, on account of their contract for manufacturing brick for the Washington aqueduct; and he is hereby directed to pay the
30 amount found due by such settlement and adjustment, out of the appropriation made for the paying the liabilities for the said aqueduct by the act 'making appropriations for certain civil expenses of the government for the year ending June thirtieth, eighteen hundred and fifty-seven,' approved the eighteenth of August, eighteen hundred and fifty-six: *Provided*, That the said parties first surrender to the United States all the brick made, together with all the machinery and appliances and other personal property prepared for executing the said contract, and the said contract be cancelled.

"Approved March 3, 1857.

"DEPARTMENT OF STATE, *March* 26, 1857.

"A true copy, collated with the original roll.

"W. HUNTER, *Chief Clerk*."

II. That the undersigned are all the parties interested in the contract for manufacturing brick for the Washington aqueduct, referred to by said resolution, and that they have respectively incurred or sustained damages, losses, and liabilities, as hereinafter stated, on account of said contract, which ought to be, and were designed and intended by said resolution to be adjusted and settled by the Secretary of the Treasury upon principles of justice and equity, and that the amount thereof found due upon such settlement and adjustment ought to be paid, in pursuance of the aforesaid joint resolutionof Congress.

III. That their respective interests in said contract are as follows:

VII. That on the 3d of March, 1856, the said Mechlin and Alexander, alleging that there had been a failure or default on the part of said De Groot to fulfil his contract with them, made and entered into an agreement with Henry Kellogg, a copy whereof is hereto attached in the appendix, marked C.

By this agreement, the said Kellogg contracted to furnish and deliver the brick for the Washington aqueduct, in strict compliance with the provisions, requirements, and conditions of the original contract of Degges & Smith, for which he was to receive the price stipulated in that contract, to wit: $8 75 per thousand. He also agreed to pay Mechlin and Alexander five per centum on every sum that might be received by him from the United States, in consideration of their continued liabilities as sureties, and also to pay all sums due to Mechlin and Alexander, or either of them, from De Groot or Darling & Company, or either of them.

After the execution of this contract, he was put in possession, under the authority of Mechlin and Alexander, of the brick-yard, of the buildings, machinery, tools, implements, materials, bricks, &c., thereon, or thereunto appertaining.

VIII. The said Kellogg, with his associate, under the name of Kellogg & Bates, immediately proceeded with diligence and good faith to perform said contract, and to complete the necessary preparations to supply the brick for the aqueduct as they might be required, and to the amount of sixty thousand per day during the season. And to that end he made large expenditures and incurred heavy liabilities in improving the brick-yard, buildings, and machinery, in the employment of hands, and the purchase and preparation of materials necessary to carry on the work, and manufactured and delivered 1,960,704 brick. His expenditures in this behalf amounted to the sum of $54,186 12, a detailed statement and account whereof, and the brick delivered by him, is set forth in the appendix marked K.

31

IX. That all necessary and proper preparations were made for the performance of said contract without delay and in good faith; and if the work had not been stopped by reason of the failure to make appropriations therefor, the brick could have been made and furnished for the aqueduct, as required by the terms and conditions of the contract, at a profit of not less than $3 50 for every thousand.

X. But in the month of September, 1856, while the said contract was being prosecuted with diligence and in good faith, the said Kellogg was notified to stop by Captain Meigs, the superintending engineer, because Congress had failed or refused to make any further appropriation for the prosecution of the work; and he was notified by said engineer that no more brick would be received, and not to make or deliver any more brick, for there was no money to pay for them. By means whereof the work was stopped, the hands employed had to be discharged, the capital and expenditures invested were rendered unavailable, the buildings, yard, materials, machinery, &c., were exposed to waste, the credit, means, and profit, that would have inured from the contract were lost, and great loss, damage, and

liability, were incurred and sustained, on account of said contract, by the aforesaid parties interested.

XI. That by the contracts made and entered into by the said De Groot & Kellogg, as aforesaid, with the substituted parties, Mechlin & Alexander, and which were recognized by the superintending engineer and by the United States, in the receipt of brick and the payment of money, they, the s id De Groot & Kellogg, respectively, became liable to furnish all the brick required to be furnished under the original contract at the stipulated price; and being subject to its burden, they, as substitute parties, upon principles of justice and equity, became entitled to all the benefits that might have inured from the contract, if due appropriation had been made by Congress for its fulfilment. And in addition to their respective outlay and expenditure, the loss of such reasonable profits as might have been made by said contract, if it had been performed by the United States, ought, in justice and equity, and were meant and intended to be allowed on settlement and adjustment by the Secretary of the Treasury, under the joint resolution aforesaid.

XII. Under the said contract, the United States had a right to demand, and the contractors were bound to deliver, forty millions of brick, of which over 4,000,000 had been delivered at the time the work was stopped. If due appropriation had been made by Congress for the prosecution of the work, the brick might have been furnished at a cost of $5 25 per thousand, leaving a profit to the contractor of $3 50 on every thousand. So that, upon forty millions, the profit would have been $144,000, which (the work being stopped for want of appropriation) the parties interested have been deprived of and lost.

And it was the equitable duty of the United States, and the true intent and meaning of the resolution of Congress aforesaid, to
32 settle, adjust, and pay the loss of reasonable profits, as well as the damages and liabilities incurred in the expenditure and outlay on account of said contract, and the value of the brick, machinery, appliances, and personal property prepared for executing the contract.

XIII. The undersigned further represent that there is on hand in said brick-yard about one million four hundred and twelve thousand of brick made, amounting at the contract price to $12 355 00. That the machinery, appliances, and personal property, prepared for executing the said contract, amount to the value of $, a detailed statement whereof is set forth in the schedule , in the appendix.

That all the brick made, together with all the machinery and appliances, and other personal property prepared for executing the said contract, have been surrendered to the United States, and said contract cancelled. A copy of the deed of surrender and cancelment, delivered to Captain Montgomery C. Meigs, superintendent of the work on the aqueduct, is set forth in the appendix, marked , and also a schedule of inventory of all the brick made, machinery, and appliances, that have been surrendered, marked ; and they are

ready and willing to do any other act or thing that may be necessary and proper for the full compliance with said resolution.

XVI. The said William H. De Groot alleges that he had not failed or neglected to perform his contract with the said Mechlin & Alexander, and that the acts of said Mechlin & Alexander to annul said contract, and take possession of the property on the 9th of May, 1855, were unauthorized and without any legal authority. But inasmuch as the said Henry Kellogg entered into the said contract, made large expenditures under it, and carried on the work diligently and faithfully, in order to avoid litigation and disputes, an amicable arrangement has been made between the parties interested in said contract for the settlement and adjustment of their respective rights in the said contract on just and equitable principles, as between themselves and the United States.

XVII. The undersigned, therefore, jointly and severally, respectfully solicit, that in pursuance of the resolution of Congress aforesaid, a speedy settlement and adjustment may be made with the parties interested in said contract, upon just and equitable principles, by the Secretary of the Treasury, of the damages, losses, and liabilities incurred or sustained by the parties respectively, on account of said contract, and that the amount found due upon such settlement and adjustment may be paid, pursuant to the resolution aforesaid.

(Signed) WILLIAM H. DE GROOT.
HENRY KELLOGG.
A. H. MECHLIN.
C. ALEXANDER.

33 *Exhibit K.*

Award of the Secretary of the Treasury in the matter of the contract for furnishing brick for the Washington aqueduct.

1. On the 23d of January, 1854, Degges & Smith contracted with the government through its agent, Capt. Meigs, for the delivery of not less than twenty-five nor more than forty millions of bricks, to be used in the construction of the Washington aqueduct. Mechlin and Alexander were the sureties on their bond.

2. By the express terms of the contract, the contractors assumed the risk of a failure of Congress to make appropriations to carry on the work.

3. On the 14th day of April, 1855, Degges & Smith failed to proceed with their contract. Mechlin and Alexander, as their sureties, were required by Captain Meigs to comply with the requirements of the bond, which they undertook to do. By themselves and their sub-contractors, the work was continued until the 13th day of August, 1856, when it was abandoned on account of the failure of Congress to make the necessary appropriation.

4. It was stipulated in the contract that no part of it should be sub-let or assigned, and accordingly no one was recognised by Capt. Meigs except the parties to the original contract; first, Degges & Smith, and afterwards Mechlin and Alexander.

5. On the 3d of March, 1857, Congress passed the following joint resolution, viz:

"*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled*, That the Secretary of the Treasury shall settle and adjust with all the parties respectively interested therein, on principles of justice and equity, all damages, losses, and liabilities incurred or sustained by said parties respectively, on account of their contract for manufacturing brick for the Washington aqueduct; and he is hereby directed to pay the amount found due by such settlement and adjustment out of the appropriation made for paying the liabilities for the said aqueduct, by the act 'making appropriations for certain civil expenses of the government for the year ending June thirtieth, eighteen hundred and fifty-seven,' approved the eighteenth of August, eighteen hundred and fifty-six: *Provided*, That the said parties first surrender to the United States all the brick made, together with all the machinery and appliances, and other personal property prepared for executing the said contract, and that the said contract be cancelled.

"Approved March 3, 1857."

6. Under this joint resolution a claim has been presented for my adjudication, signed by Alex'r H. Mechlin, Columbus Alexander, Wm. H. De Groot, and H. Kellogg. The claimants having complied with the requirements of the proviso, ask for an allowance un-
the following heads:

34 7. 1st. The loss or damage sustained in the preparation of the brick-yard.

8. 2. Compensation for the property turned over by them to the government as required by the proviso to the joint resolution.

9. 3. An allowance for such profits as they would have realized from their contract had they been enabled to have completed it.

10. Upon the first and second points there can be no doubt. The main difficulty in the case arises in fixing the proper rule for computing the loss and damage sustained in the preparation of the yard. The claimants presented an account of all the money expended by them, and ask that this shall be regarded as conclusive evidence of the loss incurred under that head.

11. This would be correct if it was the intention of Congress to remunerate them for all their work and expenditures, whether proper or improper, necessary or unnecessary.

12. If they did unnecessary work, or made profligate expenditures, I cannot agree that Congress intended to relieve them from their own bad management.

13. By the terms of the contract, the parties had assumed the risk of a failure of Congress to make appropriations to carry on the work. The appropriations were not made, and the parties appealed to Congress to relieve them from that provision of the contract.

14. When Congress responded to their application, it can hardly be supposed that it was intended not merely to relieve them from such loss as they had incurred on account of the failure of the gov-

ernment to make the appropriations, but also from any loss sustained by them in consequence of their own improvident management.

15. My opinion is that the proper construction of the joint resolution of 3d March, 1857, required that the claimants should be paid for such loss as they have sustained in consequence of the failure of the government to make the necessary appropriation for completing the contract.

16. Under this view they are entitled to the value of the brick-yard at the time it was turned over by them to the government.

17. The necessary cost of preparing the yard as it had been prepared by them, constitutes the measure of damages under this head. The correctness of this rule is clearly shown by the evidence in this case.

18. The parties present an account of their expenditures in the preparation of the yard which amount to over one hundred thousand dollars, whilst their own witnesses prove that it ought not to have cost them twenty-five thousand dollars.

19. I can see no good reason for allowing to them the seventy-five thousand dollars, (the difference between the two accounts,) which was evidently the result of their own bad management.

35 20. Having determined upon the rule for ascertaining the loss sustained in the preparation of the yard evidence was taken to ascertain the proper cost of preparing such a yard. There were only four witnesses who examined the premises as to its value when abandoned by the contractors, and who have responded fully to the interrogatories on this point. Two of them, Messrs. Andrew De Baum and Richard A. Vervalen, were examined at the instance of the claimants; and the other two, Messrs. Chas. L. Coltman and K. H. Lambell, at the instance of the government. Their respective estimates were as follows:

Chas. L. Coltman	$9,862 93
K. H. Lambell	13,200 00
A. De Baum	21,062 43
R. A. Vervalen	21,062 43

21. The average of the above estimate is $16,296 79. To this account, then, should be added certain sums not included in the estimates of witnesses, to wit

	$16,296 79
Wood and coal turned over	1,694 19
Value of land	1,500 00
Bricks	7,093 66
Articles turned over not included in the estimate	831 00
	27,415 79

This sum (27,415 79) includes the cost of the preparations of the yard and the value of the property turned over to the government.

23. The property turned over, not allowed in the estimates for the preparations of the yard, has been added, and this disposes of

the claim under the first and second heads. To this amount there should be added the ten per cent. on the brick delivered by the parties, and which was withheld under the terms of the contract.

This amount was	$2,118 40
Amount allowed above	27,415 79
	29,534 19

24. This sum, $29,534 19, covers the entire claim of the parties except such allowance as they may be entitled to for profits.

25. Whether Congress intended, not only to pay the parties their actual loss, but also to allow them such profits as they might
36 have made out of the contract, is a question not free from difficulties. The strong inclination of my own mind is against the allowance.

26. The language of the resolution may authorize, under a strict legal interpretation, such an allowance; but it presents the singular case of a party asking to be relieved from losses which he admits he has legally incurred; and not content with such relief, seeks an additional remuneration for such profits as he might have realized if he had made a different contract with the government.

27. I am, however, relieved from the necessity of passing a positive judgment upon this point by another view of the case. The evidence shows that no profit would have been made by the parties if they had been permitted to go on with the contract. The contract provided that there should be not less than twenty-five million nor more than forty millions of bricks furnished. It would seem that the parties should be satisfied if, in fixing their prospective profits, the estimate is made upon the basis of the number of brick which the contract required the government to take, to wit, twenty-five millions. If that number had been delivered, they would have been entitled to payment for them at the rate of $8 75 per thousand, which would have amounted to the sum of 218,750 dollars.

28. To ascertain the amount of profit that the parties would have made, there should be deducted from the above sum—first, the expenditures already incurred by them, to wit, the sum of $119,375 83. The remaining quantity of brick which they had to deliver would, according to their own statement, have cost them, for making and delivering $5 25 per thousand, which would have amounted to the sum of $113,018 71.

29. These two sums, exceeding the gross amount which they would have received from the government, leaves no profits; and this calculation gives the parties the benefit of a more economical management of their affairs for the time estimated for than their account shows was the case whilst they were actually employed.

30. But if the government should settle with the claimants on the basis of the forty million which might have been required, the amount

to which they would have been entitled for the making and delivery of that number would have been $350,000 00

From which deduct the amount expended, and also the cost to the parties to make and deliver the quantity still to be delivered at $5 25 per m.	$119,375 83 191,768 71	311,144 54
Leaving for profits		38,855 46

37 31. In the calculation, I have estimated the cost of making and delivering the brick at the sum which claimants allege it could be done for, and their witnesses concur in that estimate; other witnesses, equally entitled to credit, estimate the cost to the contractors of making and delivering the bricks at $9 25. If this estimate is correct, it is very clear that there was no margin for profits. If an average estimate be allowed of $7 25, it would still show that the contractors would lose money instead of realizing profits.

32. The only remaining question for my decision is, to whom shall the amount allowed be paid? The joint resolution is not as explicit on this point as it might have been; but I do not think that there can be any serious difficulty about it. Degges & Smith, by their contract, bound themselves not to sub-let or assign the same, or any portion of it. When they failed to comply with their contract, Mechlin and Alexander, their sureties, were required to carry it out, and were subrogated to all their rights as well as their liabilities under the contract. Capt. Meigs, the agent of the government, recognized Mechlin and Alexander as the only contractors known to the government; and as the contract, under which the claim has arisen, especially provided against sub-contracting, I am of opinion that Mechlin and Alexander are entitled to draw the money; and all rights and equities, as between them and other parties, must be referred to the courts of the country.

33. As, by this decision, Messrs. Mechlin and Alexander will receive all that is due from the government, both under the original contract and the joint resolution of March 3d, 1857, they must, on receiving the money, give a receipt to that effect.

HOWELL COBB,
Secretary of the Treasury.

January 11th, 1858.

38 L.—*Copy.*

WASHINGTON, *Jan'y 15th*, 1858.

Hon. Howell Cobb, Secretary of the Treasury:

SIR: I have seen what purports to be a copy of your decision upon the "proviso" of the joint resolution of Congress in the matter of the contract for furnishing brick for the Washington aqueduct, and would respectfully inquire if there is not an additional decision upon the resolution itself? as Messrs. Mechlin and Alexander are made the recipients of the money under this decision for the property sur-

rendered to gov't, in which they had not the slightest interest or ownership. I am led to infer that there is some other decision in which they have an interest, and by clerical or other errors they are made the recipients in this case.

The brick mentioned in the decision were delivered by me to gov't long before the passage of the resolution referred to. I hold a power of attorney to draw the money, under which I have drawn the money heretofore for all brick delivered, and I was not led to suppose that the passage of this resolution deprived me of the right to my own property.

If I elected to give the brick made, and other personal property I might have to the United States gov't or any other property the gov't asked for, or to present my property to any other party, I
39 supposed I had a right to do so without an act of Congress.

I did surrender the property—the property called for in the proviso of the resolution aforesaid—to the United States gov't, in consideration of having all my losses, all my liabilities, and all the damages sustained or incurred settled and paid to me.

The party of the first, viz: the gov't of the United States, contracted, by the joint resolution of the 3d of March, 1857, and bound themselves to "pay all losses, liabilities, damages," &c., provided the parties of the second part, viz: those "respectively interested" in a certain contract made and entered into by and between Deggs and Smith and Capt. M. C. Meigs, &c., should surrender said property, &c.

I claim to be the principal party "interested" in that contract, which was cancelled according to the conditions of the resolution, as mentioned in the proviso thereof. That Mechlin and Alexander could "not assign or sublet the contract," &c., does not prevent my becoming an interested party and be the recipient of the money for my own property.

The contract of Deggs and Smith was cancelled by the contract of the third of March, 1857.

I complied with all the provisions of the contract of the 3d of March, and but for my concurrence and signature to the formal cancelment of the Deggs and Smith contract, and by the surrren-
40 der of the property mentioned in the proviso, (which I alone could surrender,) I should still be the de facto contractor, and in the full enjoyment of my own property and the benefits of the contract of Deggs and Smith. I have given, (with full concurrence of such parties as were by their own claim "interested" in the contract of Degges and Smith,) to the gov't, according to your award, the sum of 29,534 19-100 dollars, as a consideration, in order to comply with the terms and conditions upon which Congress directed that I should be paid for "all losses," "all liabilities," and "damages sustained or incurred," &c., as set forth in the said joint resolution, none of which, according to your award, is in any manner provided for.

In conclusion allow me to say that the award simply directs that Mechlin & Alexander be paid for my brick, my coal and wood, my machinery, and my brick-yards, at prices fixed by yourself, without

regard to vouchers of cost in your possession, and without giving me one dollar in fulfilling the conditions upon which I transferred that property to the gov't.

Therefore I respectfully, but firmly protest against the said decision and award of the Hon. Howell Cobb, Sec't. of the Treasury, in the case, dated on the 11th day of Jan'y, 1858, by which the said Secretary awarded only the sum of 29,534 19-100 dollars, and that sum to Messrs. Mechlin & Alexander. And I also protest against any money being paid to Messrs. Mechlin & Alexander, which, by right, belongs to me. I declare that the decision is manifestly made on an erroneous interpretation of the said resolution, in disregard of its substance, and the force of the evidence and law; that it is insufficient and does great injustice to me, and that I will hereafter persist in holding the United States responsible, till I shall obtain full redress.

Respectfully, your ob't servant,

HENRY KELLOGG.

41 In the Court of Claims.

HENRY KELLOGG
vs.
THE UNITED STATES.

And now, to wit, 27th of March, 1866, the court, upon due consideration of the premises, do sustain the said demurrer, and do order, adjudge, and decree that the said petition be dismissed.

By the court.

42 In the Court of Claims.

HENRY KELLOGG
vs.
THE UNITED STATES.

To the honorable the Court of Claims:

The claimant in the above-entitled cause prays the allowance of an appeal to the Supreme Court from the judgment of this court rendered in said cause; and he makes the following specification of errors in the rulings and judgment of this court in said cause; that is to say—

Upon demurrer filed by the solicitor of the United States this court ruled:

1. That the United States, by the joint resolution of March 3, 1857, set forth in the petition in this case, and the claimant by certain instruments of writing, also set forth in the said petition, submitted themselves to the award of the Secretary of the Treasury as to the matter of claim in the said petition stated.

2d. That the Secretary of the Treasury made an award upon the said claim.

3d. That the award so made was according to the submission.

4th. That the Secretary of the Treasury, by his award, gave to Alexander & Mechlin and Columbus Alexander a fund, as trustees for themselves and whoever else might be entitled to share in it.

5th. That the claimant, by receiving from Mechlin & Alexander a sum of money as stated in the said petition, ratified the award, and is concluded now to dispute its validity.

6th. That upon the facts stated in the petition, the claimant is not entitled to recover from the United States the amount of the damages, losses, and liabilities incurred or sustained by him on account of the contract for manufacturing brick for the Washington aqueduct, referred to in the joint resolution hereinbefore cited.

In all which rulings, and in the final judgment rendered by the court, the claimant says the court erred.

June 20, 1866.

CARLISLE & McPHERSON,
for Claimants.

43 In the Court of Claims, June 21st, 1866.

HENRY KELLOGG
vs.
THE UNITED STATES.

Ordered that the appeal in the above-named case be allowed and certified as prayed for in the claimant's petition for the allowance of an appeal, filed on the 25th day of April, 1866.

By the court.

44 In the Court of Claims.

HENRY KELLOGG
vs.
THE UNITED STATES.

I, Sam'l H. Huntington, chief clerk of the Court of Claims, do hereby certify that the foregoing is a true transcript of the pleadings in the above-entitled case, and of the judgment of the court thereon; and of the petition of the claimant for the allowance of an appeal filed within ninety days after the rendition of judgment in said case as certified by the court, and of the order of the court allowing the same.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington, this 7th day of July, A. D. 1866.

[L. S.] SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

Attest:

JOS. CASEY, *Ch. J. Ct. of Cl.*